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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: *CC Docket No. 94-1, Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Service Under Price Cap Regulation*

On behalf of Pacific Bell, please find enclosed an original and six copies of its *"Reply Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Jay Bennett

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV [illegible] 1995

In the Matter of Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation	CC Docket No. 94-1

PACIFIC BELL'S REPLY COMMENTS

I. INTRODUCTION

Pacific Bell hereby submits its reply comments to the Commission's Third Further Notice of Proposed Rulemaking,[1] which seeks comment regarding the procedures for allocating costs to the video dialtone ("VDT") basket established in the Second Report and Order. We explain below that some commenters introduce issues irrelevant to this proceeding, advocate approaches which would produce unreasonable results, and rehash arguments which the Commission has already stated will be resolved at each LEC's tariffing stage. Further, we explain our proposal for calculating the interstate portion of total VDT costs, and urge the retention of a *de minimis* threshold for determining whether a LEC must include VDT costs and revenues in its calculation of sharing or low-end adjustments.

[1] In the Matter of Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, CC Docket No. 94-1, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 95-394 (rel. September 21, 1995) ("Third FNPRM").

II. MANY OF THE OPENING COMMENTS ARE IRRELEVANT TO THIS PROCEEDING OR MAKE NO SENSE WHEN APPLIED TO VDT

A. The FCC Consistently Has Stated It Will Resolve the Issue of the Appropriate Allocation Between VDT and Telephony During Each LEC's Tariff Review

Many commenters took the current narrow inquiry as an opportunity to rehash arguments the Commission has rejected throughout the history of the VDT docket. Principal among the irrelevant arguments is the cable companies' focus on the allocation of costs between VDT and telephony.[2] These commenters ignore numerous FCC pronouncements that the issue of cost allocation between VDT and telephony will be resolved on a case-by-case basis when each LEC issues its VDT tariffs.[3]

Because the LECs' VDT offerings are so dissimilar, it makes no sense to establish arbitrary rules for video-telephony cost allocation.[4] As the Commission stated a year ago:

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[2] See, e.g., CCTA's Comments, at 14 et seq.; NCTA's Comments, at 3-4.

[3] See, e.g., In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244 (1994) ("Recon. Order"), ¶ 207 ("Local telephone companies will be required to make a cost-based showing under the price caps new services test, to establish initial video dialtone prices. . . . [T]his test, as established in the established tariff review processes, provides an adequate vehicle for full consideration of the reasonableness of proposed video dialtone rates") (emphasis added). See also In the Matter of Applications of Pacific Bell, File Nos. W-P-C 6913-6916, Order and Authorization, FCC 95-302 (rel. August 15, 1995) ("Section 214 Order"), ¶ 94 (deferring specific video-telephony cost allocation issues to tariff process).

[4] See In the Matter of Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, DA 95-2026, AAD No. 95-59, Memorandum Opinion and Order (rel. Sept. 29, 1995) ("Reporting MO&O"), ¶ 16 ("Neither the Commission, nor the Bureau has mandated specific cost accounting and allocation rules for VDT. The Commission is simply requiring LECs to indicate how they are accounting for VDT, to identify dedicated and shared VDT costs, and to disclose the impact of VDT on the jurisdictional separations process and local telephone rates") (emphasis added).

> The Commission currently has generally applicable rules in place that specify the cost support that must be submitted with any new service tariff, including a video dialtone tariff. . . . LECs have proposed a number of different network architectures for video dialtone, and there are wide variations in the manner in which, and the degree to which, LECs are proposing to integrate their video dialtone systems with their telephone networks. This diversity and experimentation, which we view as beneficial to the development of a modern telecommunications infrastructure, precludes us from adopting a one-size-fits-all rule for the identification of video dialtone direct costs. The tariff review process, which includes the possibility of tariff investigations . . . will allow close examination of each LEC proposal and enable us to require such cost information as may be necessary to evaluate each proposal.[5]

Thus, the Commission has already considered, and rejected, the cable industry's proposed cookie cutter approach to cost allocation, and has stated consistently and on numerous occasions that the appropriate video-telephony allocations will be decided at each LECs tariff stage. The cable companies are beating a dead horse, and their arguments should be summarily rejected.

B. The Comments Regarding Part 36 Are Unworkable and Irrelevant to the Commission's Inquiry

Some commenters ask the Commission to modify Part 36 or create a separate Part 36 category for VDT.[6] This request has already been rejected in earlier VDT rulings.[7] Moreover, a separate Part 36 category is unnecessary because we maintain separate subsidiary

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[5] Recon. Order, ¶ 214 (emphasis added).

[6] See AT&T's Comments, at 8; see also GSA's Comments, at 6-7 (advocating a Part 36 separations process that allocates cable costs to video and telephony based on relative bandwidth). GSA also advocates that the Commission change the ARMIS 43-01 report "to include a separate column for interstate video dialtone revenues and costs." GSA's Comments, at 4. However, we already provide this information in the ARMIS 43-09 report, so no modification of the 43-01 report is necessary.

[7] Reporting MO&O, ¶ 16 ("In the *VDT Recon Order*, the Commission stated that . . . while it chose not to amend Parts 32, 54, 36, and 69 of the Commission's rules, adjustments would be needed to fit VDT into the Commission's regulatory program") (emphasis added).

records for VDT and telephony from the beginning. For this reason, we agree in principle with Comcast Cable when it states that the separation of telephone and video costs should take place before the jurisdictional separations process.[8] Once we have split the telephony and video costs, we see no reason to commingle them again by conducting a separations process pursuant to Part 36, which was not intended to distinguish between different products.

GSA's comments regarding Part 36 are also irrelevant to the Commission's inquiry, and advocate an unsuitable approach to the assignment of video and telephony costs. GSA states that the assignment of costs to Category 2 of the Cable and Wire Facility cost category in Part 36 should be based upon the relative bandwidth used by video and telephony.[9] Clearly, such an approach will result in a disproportionate cost allocation to video, which uses far more bandwidth than does telephony even though its use of extra bandwidth does not cause greater costs.

GSA goes on to advocate an unworkable allocation of VDT costs in Category 2 between the intrastate and interstate jurisdictions "on the basis of relative number of minutes of use."[10] However, there is no way to measure "minutes of use" in the video context. Unlike telephone switches, which can measure the duration of telephone calls quite precisely, a VDT network does not measure how long a viewer's television set is on or tuned to a particular channel.[11] Thus, a minutes of use standard for jurisdictional apportionment makes no sense.

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[8] See Comcast Cable's Comments, at 2.

[9] GSA's Comments, at 6-7.

[10] Id. at 7; see also Comcast Cable's Comments, at 6.

[11] We understand the Commission asked Bell Atlantic to provide information on VDT minutes of use in the context of the Dover Township VDT tariff investigation. In the Matter of Bell Atlantic Telephone Companies, Revisions to Tariff F.C.C. No. 10, Rates, Terms and

Indeed, a member of the Commission's Office of Plans and Policy opined in 1988 that "[t]he notion of trying to set prices based on some measure of relative use becomes even more absurd if they are based on a combination of throughput and actual minutes of use patterns -- the average residential telephone is used only about 23 minutes each day while the average television set is on approximately seven hours daily."[12] Cable companies do not bill end users based on their minutes of use, so LECs should not be required to measure usage in this manner either.

Finally, GSA is wrong when it states that it is "an unlikely development" that interstate and intrastate programming will be commingled on the same "channel."[13] If one is talking about the cabling component of the network, as GSA appears to be doing, it makes no difference whether one is viewing "interstate programming" or "intrastate programming"; both use the same cable, the same electrical path, and thus the same "channel."[14]

Regulations for Video Dialtone Service in Dover Township, New Jersey, CC Docket No. 95-145, Order Designating Issues for Investigation, DA 95-1928 (rel. Sept. 8, 1995), ¶ 14. With all due respect to the Commission, we agree with Bell Atlantic's response that relative minutes of use among video and telephony cannot be measured. As Bell Atlantic aptly observes: "Unlike a voice telephone call or video-on-demand 'session,' which has a set start point and duration, broadcast channels will be available for viewing by end-user subscribers at any time in which the programmer-customer is offering programming or information services." In the Matter of Amendment to the Bell Atlantic Telephone Companies Tariff FCC No. 10, Video Dialtone Service, Transmittal Nos. 741, 786 (Amended), CC Docket No. 95-145, Bell Atlantic Direct Case (Oct. 26, 1995) ("Bell Atlantic Direct Case"), at 24-25.

[12] R.M. Pepper, "Through the Looking Glass: Integrated Broadband Networks, Regulatory Policies, and Institutional Change," 4 FCC Rcd 1306, 1313 (1988) (emphasis added).

[13] GSA's Comments, at 7.

[14] Channel is defined in the Appendix - Glossary to Part 36 as "An electrical path suitable for the transmission of communications between two or more points, ordinarily between two or more stations or between channel terminations in Telecommunication Company central offices. A Channel may be furnished by wire, fiber optics, radio or a combination thereof."

C. CCTA Rehashes Arguments About Our VDT Offering That Have No Relevance Here

CCTA attacks Pacific Bell's VDT offering on grounds already raised -- and refuted -- elsewhere.[15] For example, CCTA continues to claim our Advanced Communications Network ("ACN") deployment "is being driven almost exclusively by [our] desire to enter the video market in California."[16] Contrary to CCTA's claim, our recent announcement that we will slow VDT deployment in the Los Angeles and Orange County areas does not change the fact that we are also deploying our ACN to improve the telephone network. Indeed, we will continue to deploy the network components required to support telephony in Los Angeles and Orange County, albeit at a slower rate. Thus, instead of proving that our ACN deployment is driven by video, our continuation of telephony deployment in the absence of video proves just the opposite.

CCTA also claims erroneously that we have "proposed prematurely to accelerate depreciation of a substantial amount of [our] current network equipment" and that "[t]his retirement is driven by our plans to provide video dialtone services over [our] HFC network. . . ."[17] It is true that effective third quarter 1995, the Pacific Bell discontinued accounting under Statement of Financial Accounting Standards No. 71 ("SFAS 71"), "Accounting for the Effects of Certain Types of Regulation." Pacific Bell made the change to meet competition; Pacific Bell was the sixth RBOC to discontinue SFAS 71 accounting. However, Pacific Bell's accounting and reporting for regulatory purposes -- which is what the

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[15] CCTA's Comments, at 4 et seq.

[16] Id. at 4.

[17] Id. at 13.

Commission will review when it examines our VDT accounting methodology at the tariffing stage -- are not affected by the discontinued application of SFAS 71 for financial reporting.

CCTA further claims we "grossly underallocate the investment wholly dedicated to video dialtone."[18] As with the arguments attacking the VDT-telephony cost allocation generally, the response is that these matters will be taken up at the tariff stage and are improperly raised here.[19]

III. WE ADVOCATE A SEPARATIONS PROCESS THAT USES THE METHODOLOGY OF OUR VDT TARIFF COST SUPPORT

Rather than using Part 36 to separate VDT interstate and intrastate costs, which we contend would result in an arbitrary (mis)allocation of cost, we advocate an individualized process, based upon our VDT tariff cost support methodology, to determine the total amount of VDT interstate investment. We described the details of our proposal in our opening comments,[20] and will not repeat them here.

However, we should clarify that we intend to use our cost support methodology - but not necessarily the figures we come up with -- for deriving the state and interstate VDT split each year. The figures in a new services tariff cost study are by definition projections not based on historical performance. Once we have actual historical data, we will apply our tariff

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[18] Id. at 9 & n.19.

[19] As for CCTA's claim that the FCC must carefully scrutinize our cost studies because the California Public Utilities Commission will not (CCTA's Comments, at 15 n.36), we note that we have informed the CPUC that we will make available to it whatever cost study information we furnish the FCC. Moreover, the CPUC has indicated it will carefully scrutinize our cost studies and even enlist the aid of experts to do so.

[20] Pacific Bell's Opening Comments, at 6.

cost support methodology to those data to determine the appropriate state-interstate allocation.[21]

We make this clarification because some commenters suggest that an approach that uses a LEC's tariffing methodology will grow stale with each passing year as the numbers in the original cost study become less and less relevant to the LEC's current financial situation.[22] To alleviate these concerns, we propose to use our actual results to reflect the state-interstate split in later years.

IV. THERE IS NO REASON TO REJECT THE *DE MINIMIS* THRESHOLD

Several commenters oppose the use of any *de minimis* approach to VDT investment.[23] However, their claim that use of a threshold will allow LECs to cross-subsidize their VDT offerings is inapplicable to LECs which choose a no-sharing option, as Pacific Bell has done. The *de minimis* threshold is only relevant to determine whether a LEC which chooses sharing must exclude VDT investment from its sharing calculation.

Under the FCC's proposed model, if such a LEC's VDT investment is an amount beneath the *de minimis* threshold, the LEC need not exclude that investment from its calculation of its sharing obligation. If a LEC does not need to share revenues because it has selected a productivity factor that does not require sharing, then the *de minimis* threshold is irrelevant. Under this scenario, the argument that a LEC would deliberately exaggerate its

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[21] Bell Atlantic's Comments, at 3 n.8. See also GTE's Comments, at 2-3; Bell Atlantic Direct Case, at 5-6.

[22] See, e.g., GTE's Comments, at 3.

[23] See, e.g., NCTA's Comments, at 6 et seq.; CCTA's Comments, at 4 et seq.

VDT investment vis-a-vis its telephony investment so as to reduce its sharing obligation is nonsensical, because the LEC has no such obligation.

V. CONCLUSION

We urge the Commission to defer its examination of LECs' video-telephony cost allocation methodologies to the tariffing stage, to set the *de minimis* threshold for VDT sharing and low-end adjustments at a reasonable level, and to allow LECs to base the Part 69 VDT allocation on their own tariff cost support rather than on an arbitrary fixed allocator.

Respectfully submitted,

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Date: November 20, 1995

CERTIFICATE OF SERVICE

I, Cheryl A. Peters hereby certify that on this 20 th day of November, 1995 a true and correct copy of the foregoing **Pacific Bell's Reply Comments** was mailed, first class-postage prepaid, to the parties shown on the attached list.

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